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4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION

7 JAMES SWAIN,

8 Plaintiff,

9 vs.

10 CAROLYN W. COLVIN,
11 Commissioner, Social Security
12 Administration,

13 Defendant.

Case No: C 13-00440 SBA

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANT'S CROSS-MOTION
FOR SUMMARY JUDGMENT**

14
15 Plaintiff James Ray Swain ("Plaintiff") filed the instant action, pursuant to 42 U.S.C.
16 § 405(g), seeking judicial review of a final decision of the Commissioner of Social Security
17 ("the Commissioner" or "Defendant"). Plaintiff alleges that he was improperly denied
18 disability benefits by Administrative Law Judge Timothy G. Stueve ("the ALJ") in
19 connection with his applications for Disability Insurance benefits ("DIB") and
20 Supplemental Security Income ("SSI") benefits. In particular, Plaintiff challenges the
21 ALJ's determination that he does not suffer from a mental impairment that renders him
22 "disabled."

23 The parties are presently before the Court on Plaintiff's Motion for Summary
24 Judgment (Dkt. 18) and Defendant's Cross-Motion for Summary Judgment (Dkt. 19).
25 Having read and considered the papers submitted, and having reviewed the record, the
26 Court hereby GRANTS Plaintiff's motion and DENIES Defendant's motion. The action is
27 remanded to the Commissioner for the immediate payment of benefits. The Court
28 adjudicates the instant motion without oral argument. Civ. L.R. 7-1(b).

1 **I. BACKGROUND**

2 **A. PROCEDURAL HISTORY**

3 On June 29, 2009, Plaintiff filed concurrent applications for DIB and SSI benefits,
4 alleging he became “disabled” on November 1, 2007. Administrative Record (“AR”) 88-
5 89, 160-61, 162-68, 198. Plaintiff’s applications were denied initially and upon
6 reconsideration. Plaintiff requested a hearing, which took place on July 7, 2011, before the
7 ALJ. AR 52. The ALJ issued his Decision on August 25, 2011, which was adverse to
8 Plaintiff. AR 19-40. The Appeals Council subsequently denied Plaintiff’s request for
9 relief, thus making the Decision the final decision of the Commissioner. AR 1-6.
10 Thereafter, Plaintiff commenced the instant action in this Court seeking judicial review of
11 the Commissioner’s final decision. 42 U.S.C. §§ 405(g), 1383(c). Plaintiff requests the
12 immediate payment of benefits for the period from June 2009 to the present, or
13 alternatively, to remand the matter for further administrative proceedings. The parties have
14 filed cross-motions for summary judgment in accordance with the Court’s Procedural Order
15 for Social Security Review Actions. Dkt. 18, 19, 21.

16 **B. FACTUAL SUMMARY**

17 Plaintiff was born on March 22, 1961. AR 19. He completed high school, and has
18 had a sporadic employment history working as a laborer, telephone operator and
19 maintenance worker. AR 19, 57-59. He has no health insurance, and no income other than
20 public assistance through food stamps. AR 59-60.

21 In or about 2007, Plaintiff was involved in a major motor vehicle accident and
22 suffered multiple injuries, including a severe head injury. AR 436. His fiancée died in the
23 accident. Id. Around the same time period, Plaintiff’s close friend Leroy also died. Id.
24 Plaintiff currently lives in an apartment in Pittsburgh, California, with his girlfriend, Alonza
25 Glaze, whom he met at church. AR 24-25, 72. Ms. Glaze takes care of Plaintiff and the
26 household, as he “can’t do anything” due to his depression, hallucinations and other mental
27 issues. AR 74. Plaintiff alleges that he became disabled as of November 1, 2007, as a
28

1 result of arthritis in both knees, high blood pressure, diabetes, depression and memory
2 problems. AR 19.

3 Beginning late 2009, Plaintiff was treated by psychiatrist Rinata Wagle, M.D., at
4 Contra Costa Health Services, Mental Health Division. AR 62. Dr. Wagle's mental status
5 examinations and progress notes characterize Plaintiff as suffering from depression,
6 auditory hallucinations (i.e., hearing Leroy's voice and having conversations with him)
7 confusion with internal preoccupation, slow speech with latency, minimal responsiveness,
8 dysphoric with flat affect and poor eye contact. AR 408, 411, 412, 416, 485, 492, 494, 498,
9 500, 506, 508. Her progress notes report "severe" functional impairment in the areas of
10 school performance/employment, social relations and daily activities. AR 409. Dr. Wagle
11 opined that Plaintiff's depression, hallucinations and other mental issues rendered him
12 disabled as of November 1, 2007. AR 389.

13 On referral from the California Department of Developmental Services ("DDS"),
14 Plaintiff was examined by Douglas Dolnak, D.O., and Mathilde Weems, M.D. In his
15 mental status examination of Plaintiff, Dr. Dolnak noted that Plaintiff had reported periods
16 of depression and anxiety since the 2007 fatal car accident. AR 335. Plaintiff continued to
17 experience periods of crying, grief, feelings of helplessness and loneliness, and reported
18 negative hallucinations and hearing the voices of the deceased telling him he is "no good."
19 Id. Plaintiff reported taking Elavil, Depakote, Risperdone and Haldol (i.e., antidepressant,
20 bipolar, antipsychotic, schizophrenia medications) for his symptoms. AR 333. Dr. Dolnak
21 opined that while Plaintiff is able to perform simple, repetitive tasks, his depression,
22 anxiety and social withdrawal would make it difficult for him to perform detailed and
23 complex tasks, interact with co-workers, and perform work activities on a consistent basis
24 without special or additional supervision. AR 336-37.

25 Dr. Weems, a board-certified psychiatrist, also conducted a mental status
26 examination of Plaintiff on a consultative basis. AR 435. In her report, dated August 17,
27 2010, Dr. Weems described Plaintiff's difficulty sleeping and frequent conversations with
28 his deceased friend Leroy and his fiancée, Willie, who died in the 2007 car accident.

1 During his examination, Plaintiff showed a childlike demeanor (exemplified by his frequent
2 response of “I don’t know”), poor concentration throughout the interview, thought-blocking
3 and a paucity of thought content, significant auditory hallucinations, decreased mood with
4 congruent affect, and a lack of mental orientation to date and location. AR 436-37. Dr.
5 Weems imposed limitations including an inability to accept instructions from supervisors or
6 interact with others due to confusion and cognitive impairments, an inability to function in
7 the workplace, and an inability to tolerate the stress encountered in a typical workplace
8 setting. AR 434-40, 471-73, 485-509.

9 C. THE ALJ’S DECISION

10 On July 7, 2011, Plaintiff appeared before the ALJ for the administrative hearing on
11 his benefits claim. At the hearing, the ALJ heard testimony from Plaintiff, his girlfriend
12 Ms. Glaze, and a vocational expert. AR 53. On August 25, 2011, ALJ rendered his
13 Decision. AR 19-40. Applying the requisite five-step sequential evaluation¹, the ALJ
14 found that neither Plaintiff’s physical nor his mental impairments were sufficiently severe
15 to sustain a finding of disability. AR 22-23. Although the ALJ determined that Plaintiff
16 had severely arthritic and damaged knees and suffered from depression and posttraumatic
17 stress disorder, he nonetheless found Plaintiff did not have an impairment or combination
18 thereof that met or medically equaled one of the listed impairments in 20 C.F.R. Part 404,
19 Subpart P, Appendix 1. AR 21-22. Specifically, he ruled that Plaintiff had a physical

20 ¹ Under Title II of the Social Security Act, disability insurance benefits are available
21 when an eligible claimant is unable to “engage in any substantial gainful activity by reason
22 of any medically determinable physical or mental impairment . . . which has lasted or can
23 be expected to last for a continuous period of not less than 12 months.” 42 U.S.C.
24 § 423(d)(1)(A). To determine a claimant’s eligibility, the ALJ engages in a five-step
25 sequential evaluation process to determine whether a claimant is disabled under the Act.
26 20 C.F.R. § 404.1520(a). To establish disability, the claimant bears the burden of showing
27 (1) that he is not working; (2) that he has a severe physical or mental impairment; (3) that
28 the impairment meets or equals the requirements of a listed impairment; and (4) that his
residual functional capacity (“RFC”) precludes him from performing his past relevant
work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). At Step Five, the burden shifts to the
Commissioner to show that the claimant has the RFC to perform other work that exists in
substantial numbers in the national economy. *Hoopai v. Astrue*, 499 F.3d 1071, 1074 (9th
Cir. 2007). If the Commissioner conclusively finds the claimant “disabled” or “not
disabled” at any point in the five-step process, he does not proceed to the next step. 20
C.F.R. § § 404.1520(a)(4), 416.920(a)(4).

1 residual functional capacity (“RFC”) to perform light work, and a mental RFC to “perform
2 simple, routine, and repetitive tasks[,] involving simple work related decisions[,] with few
3 if any workplace changes[,] and involving no interaction with the public.” AR 23. As
4 such, the ALJ concluded that Plaintiff was not “disabled” through the date of the hearing.
5 AR 21.

6 **II. STANDARD OF REVIEW**

7 Pursuant to 42 U.S.C. § 405(g), a district court has authority to review a
8 Commissioner’s decision to deny disability benefits to a claimant. “The ALJ is responsible
9 for determining credibility, resolving conflicts in medical testimony, and for resolving
10 ambiguities.” Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995). The district court’s
11 role is “to ensure that the [ALJ’s] decision was supported by substantial evidence and a
12 correct application of the law.” Ludwig v. Astrue 681 F.3d 1047, 1051 (9th Cir. 2012).
13 “‘Substantial evidence’ means more than a mere scintilla, but less than a preponderance,
14 i.e., such relevant evidence as a reasonable mind might accept as adequate to support a
15 conclusion.” Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). The Court
16 must “review the administrative record as a whole, weighing both the evidence that
17 supports and the evidence that detracts from the Commissioner’s conclusion.” Reddick v.
18 Chater, 157 F.3d 715, 720 (9th Cir. 1998). “Where the evidence can reasonably support
19 either affirming or reversing the decision, [the district court] may not substitute [its]
20 judgment for that of the Commissioner.” Parra v. Astrue, 481 F.3d 742, 746 (9th Cir.
21 2007).

22 **III. DISCUSSION**

23 **A. ISSUES**

24 Plaintiff contends on appeal that the Commissioner’s finding that his mental RFC
25 alone does not preclude him from all work in the national economy is not supported by
26 substantial evidence.² More specifically, Plaintiff contends that the ALJ improperly
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28 ² The ALJ’s finding regarding Plaintiff’s physical RFC is not at issue.

1 ignored or rejected the medical opinions of Drs. Wagle, Dolnak, Weems—all of whom
2 treated or examined Plaintiff—and instead, credited the opinion of Dr. M. Acinas, a general
3 practitioner who never examined or treated Plaintiff. Pl.’s Mot. at 2. In particular, the ALJ
4 relied on Dr. Acinas’ opinion to support his conclusion that Plaintiff was not credible and
5 that he was exaggerating his mental symptoms in order to obtain benefits. AR 37-38.

6 In evaluating the credibility of a claimant’s testimony regarding subjective pain or
7 other symptoms, an ALJ must engage in a two-step analysis. Vasquez v. Astrue, 572 F.3d
8 586, 591 (9th Cir. 2009). “First, the ALJ must determine whether the claimant has
9 presented objective medical evidence of an underlying impairment which could reasonably
10 be expected to produce the pain or other symptoms alleged.” Lingenfelter v. Astrue, 504
11 F.3d 1028, 1036 (9th Cir. 2007)) (internal citations and quotation marks omitted). “The
12 claimant is not required to show that her impairment ‘could reasonably be expected to
13 cause the severity of the symptom she has alleged; she need only show that it could
14 reasonably have caused some degree of the symptom.’” Id. (quoting Smolen v. Chater, 80
15 F.3d 1273, 1282 (9th Cir. 1996)). “Second, if the claimant meets this first test, and there is
16 no evidence of malingering, the ALJ can reject the claimant’s testimony about the severity
17 of her symptoms only by offering specific, clear and convincing reasons for doing so.”
18 Lingefelter, 504 F.3d at 1036 (internal quotations omitted). “In weighing a claimant’s
19 credibility, the ALJ may consider his reputation for truthfulness, inconsistencies either in
20 his testimony or between his testimony and his conduct, his daily activities, his work
21 record, and testimony from physicians and third parties concerning the nature, severity, and
22 effect of the symptoms of which he complains.” Light v. Soc. Sec. Admin., 119 F.3d 789,
23 792 (9th Cir. 1997).

24 Ostensibly in connection with the first step in assessing Plaintiff’s credibility, i.e.,
25 whether there is objective medical evidence to support the claimed impairment, the ALJ
26 asserted that “the most debilitating mental symptomatology described by the claimant is
27 subjective in nature and cannot be objectively tested or verified, including his isolating
28 behavior and his ongoing complaints of ongoing auditory hallucinations.” AR 37. This

1 statement is erroneous. Generally, it is true that psychiatric impairments are not as
2 amenable to substantiation by objective laboratory testing as are physical impairments.
3 Hartman v. Bowen, 636 F. Supp. 129, 131-132 (N.D. Cal. 1986). “Thus, when mental
4 illness is the basis of a disability claim, as in this case, clinical and laboratory data may
5 consist of the diagnoses and observations of professional psychiatrists and psychologists.”
6 Id. “The report of a psychiatrist should not be rejected simply because of the relative
7 imprecision of the psychiatric methodology or the absence of substantial documentation,
8 unless there are other reasons to question the diagnostic technique.” Christensen v. Bowen,
9 633 F. Supp. 1214, 1220-21 (N.D. Cal. 1986); see also Embrey v. Bowen, 849 F.2d 418,
10 422 (9th Cir. 1988) (noting that the Commissioner must give proper weight to the
11 subjective elements of a physician’s opinion).

12 In the instant case, the ALJ erred in his credibility assessment by improperly
13 rejecting objective, probative evidence regarding Plaintiff’s mental impairments by,
14 without sufficient justification, according case-dispositive weight to the opinion of a *non-*
15 examining, *non*-treating physician, while effectively rejecting the opinions of Plaintiff’s
16 treating and examining physicians. There are three types of physicians whose opinions
17 may be considered in an SSI matter: “(1) those who treat the claimant (treating
18 physicians); (2) those who examine but do not treat the claimant (examining physicians);
19 and (3) those who neither examine nor treat the claimant (nonexamining physicians).”
20 Lester v. Chater, 81 F.3d 821, 831 (9th Cir. 1995). A treating physician’s opinion is
21 entitled to the most weight, id., since he or she “is employed to cure and has a greater
22 opportunity to know and observe the patient as an individual,” Magallanes v. Bowen, 881
23 F.2d 747, 751 (9th Cir. 1989). “The opinion of an examining physician is, in turn, entitled
24 to greater weight than the opinion of a nonexamining physician.” Lester, 81 F.3d at 831.
25 To reject an uncontradicted opinion of an examining physician, an ALJ must provide clear
26 and convincing reasons. Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005). If an
27 examining physician’s opinion is contradicted by another physician’s opinion, an ALJ must
28 provide specific and legitimate reasons to reject it. Id.

1 In his Decision, the ALJ stated: “Given the substantial credibility issues set forth in
2 the record, in fashioning the claimant’s mental residual functional capacity, *I have*
3 *accorded the most probative weight to the findings of DDS examiner Dr. Acinas.* AR 37
4 (emphasis added). . . . [¶] I agree with Dr. Acinas that there are substantial credibility
5 issues in this case which make it difficult to determine the claimant’s actual mental residual
6 functional capacity.” AT 37-38. However, the Ninth Circuit has held that “[t]he opinion of
7 a nonexamining physician cannot by itself constitute substantial evidence that justifies the
8 rejection of the opinion of either an examining physician or a treating physician.” Lester,
9 81 F.3d at 831. Tellingly, nowhere in its brief does the Commissioner cite Lester let alone
10 acknowledge this controlling point of law. Moreover, the ALJ failed to provide any
11 specific and legitimate reasons for crediting the opinion of Dr. Acinas regarding Plaintiff’s
12 credibility, over those of Plaintiff’s treating and examining physicians who are mental
13 health specialists.

14 Had the ALJ properly considered the opinions of Plaintiff’s treating and examining
15 physicians, it is clear that Plaintiff would have been found disabled. Dr. Wagle, a board-
16 certified psychiatrist, began treating Plaintiff in 2009. AR 62. In her report, Dr. Wagle
17 specifically opines that Plaintiff’s depression, hallucinations and other mental issues
18 rendered him disabled as of November 1, 2007. AR 389. Based on her clinical evaluation
19 of Plaintiff, she found that he had “severe” functional impairments in the areas of school
20 performance/employment, social relations and daily activities. AR 409. Dr. Wagle also
21 noted confusion with internal preoccupation, auditory hallucinations, slow speech with
22 latency, minimal responsiveness, poor eye contact, dysphoric with flat affect. AR 408, 411,
23 412, 416, 485, 485, 492, 494, 498.

24 The ALJ expressly rejected Dr. Wagle’s finding that Plaintiff was disabled as of
25 November 1, 2007, claiming that “he [sic] had no objective basis for reaching that
26 conclusion” and that her report “was conclusionary, containing no objective findings.” AR
27 33. Not so. The ALJ ignored evidence in the record, including Dr. Wagle’s numerous
28 progress notes and *her* findings therein, which support her findings regarding Plaintiff’s

1 mental limitations. Moreover, the ALJ offers no explanation why he failed to accord the
2 requisite weight to the opinions of Drs. Dolnak and Dr. Weems, both of whom personally
3 examined Plaintiff and confirmed the existence and severity of Plaintiff's mental
4 impairments. See Lester, 81 F.3d at 831 ("[L]ike the opinion of a treating doctor, the
5 opinion of an examining doctor, even if contradicted by another doctor, can only be
6 rejected for specific and legitimate reasons that are supported by substantial evidence in the
7 record."). Given the record presented, the ALJ's reliance on the opinion of Dr. Acinas, a
8 non-examining physician, over the opinions of Plaintiff's treating and examining
9 physicians, constitutes reversible error.

10 The Commissioner glosses over the ALJ's reliance on the opinion of a non-treating,
11 non-examining physician to assess Plaintiff's credibility, and counters that "[t]he opinions
12 of non-examining State agency psychiatrist, H. Hurwitz, M.D., and non-examining State
13 agency psychologist, K.P. Morris, Psy.D., support the ALJ's findings." Cross-Mot. at 3.³
14 The flaw in that argument is that ALJ did *not* premise his mental RFC finding on the
15 opinions of either Drs. Hurwitz or Morris. As a result, the Commissioner cannot rely on
16 post hoc speculation or rationalizations to justify the ALJ's decision. See Orn v. Astrue,
17 495 F.3d 625, 630 (9th Cir. 2007) ("We review only the reasons provided by the ALJ in the
18 disability determination and may not affirm the ALJ on a ground upon which he did not
19 rely."). Indeed, it would be error for this Court to affirm the ALJ's decision based on such
20 evidence. Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003) ("It was error for the
21 district court to affirm the ALJ's credibility decision based on evidence that the ALJ did not
22 discuss.").

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25 ³ The Commissioner claims that although the ALJ specifically cites to Dr. Acinas'
26 opinions in his Decision, the ALJ actually is referring to the opinions of K.P. Morris, Pys.
27 D., whose name appears in Dr. Acinas' report. Def.'s Cross-Mot. at 8 n.7 (citing AR 431-
28 433). The remark in Dr. Acinas' report appears to be attributable to "K.P. Morris," though
the record is far from clear in that respect. In any event, to the extent the Commissioner is
correct, that actually further undermines the ALJ's decision, as he would have relied on the
opinion of non-physician who never examined Plaintiff over those physicians who actually
treated and examined him.

1 Aside from ignoring the opinions and findings of Plaintiff's treating and examining
2 physicians, the ALJ erred in his assessment of Plaintiff's testimony. In his Decision, the
3 ALJ cited Plaintiff's purported "inconsistent statements and exaggerations" as a basis for
4 finding that his claim involved "symptomology in excess of what would be reasonably
5 expected." AR 35. For example, the ALJ noted that although there was some evidence that
6 Plaintiff sought mental health treatment after the fatal car accident in 2007, he did not seek
7 treatment from Contra Costa Health Services until after the DDS referred Plaintiff for a
8 psychiatric evaluation in connection with his benefits claim. AR 36. However, the Ninth
9 Circuit has counseled against questioning a claimant's credibility based upon the timing
10 and source of a medical referral. See Nguyen v. Chater, 100 F.3d 1462, 1465 (9th Cir.
11 1996) (finding that in view of the nature of mental illness, a delay in seeking mental health
12 treatment and the fact that the examination was at the request of his attorney should not
13 inure to the detriment of the claimant).

14 The ALJ also discounted Plaintiff's credibility based on his exhibiting "no abnormal
15 mental symptomology" or "instability" during his physical examinations. AR 36. In other
16 words, the ALJ believed that if Plaintiff were as mentally impaired as alleged, his other
17 (non-mental health) physicians would have noted as such in their records. As an example,
18 the ALJ cited Plaintiff's visit with Dr. Nguyen, who noted that "the claimant's mood and
19 affect were normal." AR 36, 328. However, Dr. Nguyen examined Plaintiff upon referral
20 from the DSS for a "comprehensive orthopedic evaluation," not a mental health evaluation.
21 AR 326. That Plaintiff's mood and affect may have appeared normal for purposes of a
22 physical evaluation does not ipso facto mean that a different presentation in the context of a
23 mental examination or evaluation shows that he is fabricating or exaggerating his
24 impairments. In any event, the isolated comment of a single provider who was focused on
25 examining a *physical* injury can hardly be considered substantial evidence of Plaintiff's
26 lack of credibility.

27 Finally, the ALJ construed Plaintiff's allegedly "frequent, repetitive and consistent
28 response of 'I don't know'" as evidence that he is not "as impaired as he seems to be." AR

36-37. However, the record shows that Plaintiff answered “I don’t know” only five times in response to the approximately seventy questions posed by the ALJ.⁴ AR 59, 63, 65-67. In addition, Plaintiff’s medical record shows that Plaintiff often responded “I don’t know” to questions posed by his physicians. But rather than interpreting such responses as evidence of Plaintiff’s evasiveness or lack of credibility, the physicians viewed them as being indicative of his mental limitations. Dr. Weems, for instance, described Plaintiff as “childlike,” often responding “I don’t know” in response to her questions. AR 436. She also seemed to connect such responses to Plaintiff having suffered multiple injuries, including a severe head injury, as a result of the car accident in 2007. *Id.* Similarly, other medical providers consistently noted Plaintiff’s response of “I don’t know” evinced he was disoriented, a “poor historian” and “minimally responsive.” AR 406-408. Rather than construing Plaintiff’s few “I don’t know” responses as indicative of lack of credibility, the ALJ should have considered such responses in the context of the medical records presented, which he failed to do. In view of the record presented, the Court cannot conclude that substantial evidence supports the ALJ’s assessment of Plaintiff’s credibility.

B. REMEDY

The decision whether to remand for further proceedings under sentence four of 42 U.S.C. § 405(g) or simply to award benefits is within the discretion of the district court. *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000). “If additional proceedings can remedy defects in the original administrative proceedings, a social security case should be remanded. Where, however, a rehearing would simply delay receipt of benefits, reversal and an award of benefits is appropriate.” *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989); *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (“Remanding a disability claim for further proceedings can delay much needed income for claimants who are unable to work and are entitled to benefits, often subjecting them to tremendous

⁴ These questions pertained to the last job he worked, whether he saw a therapist prior to Dr. Wagle, the substances he used over two years prior to the hearing, and whether his mental problems are always like those he exhibited during the hearing. AR 59, 63, 65-67.

1 financial difficulties while awaiting the outcome of their appeals and proceedings on
2 remand.”) (internal quotations and citation omitted).

3 Where the ALJ fails to provide an adequate reason for discrediting the symptom
4 testimony of the claimant or rejecting the opinion of an examining physician, that testimony
5 or opinion is credited as a matter of law. Lester, 81 F.3d at 834 (citing Varney v. Sec. of
6 HHS, 859 F.2d 1396, 1401 (9th Cir. 1988)). “More specifically, the district court should
7 credit evidence that was rejected during the administrative process and remand for an
8 immediate award of benefits if (1) the ALJ failed to provide legally sufficient reasons for
9 rejecting the evidence; (2) there are no outstanding issues that must be resolved before a
10 determination of disability can be made; and (3) it is clear from the record that the ALJ
11 would be required to find the claimant disabled were such evidence credited.” Benecke,
12 379 F.3d at 593.

13 As discussed above, the ALJ did not provide legally sufficient reasons for rejecting,
14 either tacitly or expressly, the opinions of Plaintiff’s treating and examining physicians, and
15 correspondingly crediting the opinion of a non-examining and non-treating physician.
16 Moreover, it is clear from the record that had he properly credited their opinions, a finding
17 of disability based on Plaintiff’s mental impairments would have followed. Since neither
18 party has identified any outstanding issues to be determined, coupled with Plaintiff’s
19 unrefuted assertion that further delay would inure to his detriment, the Court, in its
20 discretion, remands this matter to the Commissioner for the immediate payment of benefits.
21 E.g., Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986) (“Where, as here, the record
22 has been thoroughly developed, it is within [the court’s] discretion to award benefits
23 without remanding the case for additional evidence.”).


1 **IV. CONCLUSION**

2 For the foregoing reasons,

3 IT IS HEREBY ORDERED THAT Plaintiff's motion for summary judgment is
4 GRANTED and Defendant's cross-motion for summary judgment is DENIED. The
5 Commissioner's Decision is REVERSED and this matter is REMANDED for the
6 immediate payment of benefits consistent with this Order. The Clerk shall close the file
7 and terminate all pending matters.

8 IT IS SO ORDERED.

9 Dated: 3/31/14


SAUNDRA BROWN ARMSTRONG
United States District Judge